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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
LANSING

STANLEY "SKIP" PRUSS
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House Bill 5962 (As Introduced)

Topic: Misclassification
Sponsor: Representative Kandrevas
Co-sponsors: None
Committee: House Labor

Date Introduced: March 17, 2010

Date of Summary: March 23, 2010

The bill amends Section 171 and adds a new section to the Worker's Disability Compensation Act of 1969. The bill provides that a contractor is considered to be an employee unless it is demonstrated that the contractor is not an employee and the contractor has been and will be free from the principal's direction and control. A principal that fails to properly classify an individual as an employee and fails to pay benefits or other contributions required by the act is guilty of a felony or a misdemeanor, depending upon whether the violation is knowing or unintentional. For knowingly violating the section, the bill declares a violation to be felony punishable by imprisonment for not more than 18 months or a fine of not more than \$15,000, or both, for a first offense. The penalty for second and subsequent offenses is increased to imprisonment for not more than 7 years or a fine of not more than \$30,000, or both. For an unintentional violation, the bill establishes misdemeanor penalties of not more than 6 months imprisonment or a fine of not more than \$2,500, or both, for a first offense. Second or subsequent offenses would be punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000, or both.

If the director determines that a violation has occurred, a stop-work order may be issued. Such an order requires cessation of all business operations within 72 hours of the determination and takes effect when served. The order remains in effect until the director issues an order releasing it or upon finding that the employer has properly classified the individual as an employee. The director may impose a probationary period not to exceed 2 years and require the employer to file periodic reports with the department. Filing times and report requirements will be the subject of administrative rules. A stop work order and penalty are effective against any successor corporation or business entity that has one or more of the same principals or officers and that is engaged in the same or equivalent trade or activity. The bill provides for an administrative penalty of \$1,000 per day against an employer for each day that business operations are conducted in violation of a stop work order.

A contractor improperly classified as a contractor or an organization or union representing the employee may bring a civil action to enforce the classification. An individual's representative,

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including a labor organization, has standing to bring the action on behalf of an individual or a class. The court may award attorney fees and other costs in addition to damages to an individual or class not properly classified as employees. The remedies provided by the amendments to Section 171 are declared to be cumulative and do not prohibit the bringing of any other administrative, civil, or criminal action permitted by law. Section 171 authorizes the director to promulgate rules to enforce the act.

Section 172 provides for the debarment of employers, or officers or agents of the employer, who have knowingly and intentionally violated the act. The new section sets forth the process and procedures for debarring those individuals from receipt of contracts from public bodies. The section provides for an administrative penalty up to a maximum of \$2,500 for the first violation and up to \$5,000 for each subsequent violation. In determining the amount of the administrative penalty the bill requires the director to consider the employer's violation history, the seriousness of the violation, the employer's good faith, and the size of the business. The department is authorized to subpoena witnesses, administer oaths, examine witnesses, take testimony, and compel the production of documents. An employer or other party is prohibited from discriminating or taking adverse action against a person in retaliation for exercising rights protected under the act. Taking adverse action against a person within 90 days after the person's good faith exercise of rights creates a rebuttable presumption of having done so in retaliation for the exercise of those rights. A person alleging retaliatory action is permitted to bring a court action to seek compensation for economic and noneconomic losses, including punitive damages. Assessments and administrative penalties collected under the act are to be placed in the Worker's Compensation Administrative Revolving Fund created in Section 835A.